

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

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KIM A. THOMAS,

Plaintiff,

-v.-

COMMISSIONER OF SOCIAL SECURITY,

Defendant.
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: ORDER
: 20 Civ. 9274 (GWG)

GABRIEL W. GORENSTEIN, United States Magistrate Judge

On July 22, 2014, the plaintiff Kim A. Thomas applied for social security benefits under Title II and Title XVI of the Social Security Act. See Declaration of Lesha Cowell, filed April 5, 2021 (Docket # 15) (“Cowell Decl.”), ¶ 3(b). These applications were denied and Thomas requested a hearing on the Title XVI denial only. Id. After a hearing and an appeal, the Commissioner of Social Security issued a final decision denying her claim and Thomas filed suit challenging the denial. See Thomas v. Comm’r of Soc. Sec., 19 Civ. 1177, Complaint, filed February 6, 2019 (Docket # 2). On August 18, 2020, this Court issued an opinion and order upholding the Commissioner’s determination. See Thomas v. Comm’r of Soc. Sec., 19 Civ. 1177, Opinion and Order (Docket # 22). Judgment was entered the same day. See Thomas v. Comm’r of Soc. Sec., 19 Civ. 1177, Clerk’s Judgment, entered August 18, 2020 (Docket # 23).

Thomas has now filed a new lawsuit purporting to challenge a new denial of an application for social security benefits. See Complaint, filed November 4, 2020 (Docket # 2), ¶ 6. The Complaint alleges that an administrative law judge issued a decision denying her claim on “10 · 2020.” Id. The complaint also alleges that the Appeals Council sent Thomas a letter affirming that decision on “9 · 2020.” Id. ¶¶ 7-8. Plaintiff did not attach any decision or letter from the Appeals Council to her complaint.

Defendant has filed a motion to dismiss this case for lack of subject matter jurisdiction, see Motion to Dismiss, filed April 5, 2021 (Docket # 14), which plaintiff has not responded to. As part of that motion, defendant has submitted a declaration from an employee of the Social Security Administration, who attests that the SSA’s records show “that the Plaintiff did not file an application for Social Security benefits other than the applications for benefits filed on July 22, 2014.” Cowell Decl. ¶ 3(i).


Plaintiff has the burden of showing that this Court has subject matter jurisdiction over her complaint. See Malik v. Meissner, 82 F.3d 560, 562 (2d Cir. 1996). On a motion to dismiss for lack of subject matter jurisdiction, a district court may look to evidence outside the pleadings. Makarova v. United States, 201 F.3d 110, 113 (2d Cir. 2000). To show subject matter

jurisdiction, plaintiff must point to a statute that permits the Court to hear this case. See generally FDIC v. Meyer, 510 U.S. 471, 475 (1994) (“Absent a waiver, sovereign immunity shields the Federal Government and its agencies from suit.”). While there are statutes conferring jurisdiction on a district court to review a social security determination, the statutes permits court review only of a “final decision of the Commissioner of Social Security.” 42 U.S.C. § 405(g); see also 42 U.S.C. § 1383(c)(3) (allowing review “as provided in section 405(g) of this title”). Here, although plaintiff asserts she is seeking to review a final decision issued in 2020, she has presented no evidence that any such final decision exists and thus the prerequisite of the statute — the existence of a “final decision” — is not met. 42 U.S.C. § 405(g). Accordingly, the Court does not have subject matter jurisdiction over this lawsuit.

For these reasons, defendant’s motion to dismiss (Docket # 14) is granted. The Clerk is directed to enter judgment dismissing the complaint and to close the case. Also, the Clerk is requested to mail a copy of this Order to plaintiff.

SO ORDERED.

Dated: May 13, 2021
New York, New York



GABRIEL W. CORENSTEIN
United States Magistrate Judge